

ESTATE OF WILLIAM CECIL ROBEDEAUX

IBIA 73-10 (Supp. to 71-5)

Decided June 5, 1973

Appeal from Judge's decision denying petition for rehearing.

Affirmed.

Indian Probate: Attorneys at Law: Fees

Contracts between attorneys and Indian clients for fees are not controlling upon the Government when payment is to be made from the funds of a restricted or trust estate.

Indian Probate: Attorneys at Law: Fees

Attorney's fees in Indian probate will be determined on the basis of "reasonableness" a corollary of "quantum meruit" defined "as much as he deserved."

Indian Probate: Attorneys at Law: Fees

When an attorney seeks a fee allowance from a Judge other than the one before whom he appeared while performing legal

services, it is incumbent upon him to make proof of the extent of the services and the skill employed; the record must be complete when the matter reaches the reviewing authority; and in such cases a claim for fees based solely upon the gross number of hours worked multiplied by an arbitrary rate per hour will be given little credence.

APPEARANCES: Huston Bus Hill and Thurman S. Hurst, attorneys pro se.

OPINION BY MR. MCKEE

This matter is before this Board for the second time. This appeal is from the decision issued by Judge Curran, July 21, 1972, denying the petition of Houston Bus Hill and Thurman S. Hurst for rehearing. The Board's first decision, Estate of William Cecil Robedeaux, 1 IBIA 106, 78 I.D. 234 (1971) disposed of a number of issues, but remanded the single issue of the appellants' entitlement to and the amount of attorney's fees, if any, for further hearing and decision. The appellants' claim was for a total of \$8,250, and after the remand-hearing Judge Curran allowed \$1,500 to which appellants object.

The fact situation is largely set out in the Board's first decision. For the purposes of this decision the following summary is sufficient:

1) The decedent was married at his death; 2) he died December 16, 1968, leaving a will dated March 2, 1967, which has received a Departmental final approval; 3) in 1957, eleven years prior to decedent's death, a son, Willis Robedeaux was appointed by an Oklahoma court as guardian of his father's estate to receive and disburse the income derived almost exclusively from Indian trust property; 4) during the guardianship a divorce action was initiated in the decedent's own name, and his ability to prosecute the suit in spite of the apparent disability of the guardianship was affirmed by the Supreme Court of Oklahoma in State ex rel. Robedeaux v. Johnson, 418 P.2d 337 (September 13, 1966); 5) Mr. Hill was the sole attorney in the guardianship matter and Mr. Hurst was co-counsel in the divorce proceedings; 6) on April 15, 1966, the need for the guardianship ended upon the Indian Bureau's decision to reassert full control of the trust estate income; 7) according to the final accounting filed in the guardianship on April 19, 1966, Mr. Hill had received a total of \$700 as fees, the last installment having been paid on that date; 8) neither the final accounting nor the amended final accounting was ever approved by the county court since the objections and other pleadings filed by the wife are not disposed of; 9) Mr. Hill did perform additional services in the guardianship, and in this probate is claiming an additional fee of \$1,500 of which he has been awarded \$300 by Judge Curran; 10) the county court of

Oklahoma County issued no orders authorizing the employment of Mr. Hill as attorney for the guardian or the institution of the divorce action; 11) no petition to fix fees was filed in either the county court or the district court; 12) no fees were advanced or paid during the course of the divorce action, and although the decision in State v. Johnson, supra, was issued September 13, 1966, the divorce had not been brought to trial on its merits prior to decedent's death on December 16, 1968; and 13) in this probate Mr. Hall and Mr. Hurst are claiming fees for services in the divorce action in the amount of \$6,250 of which they have been awarded \$1,300 by Judge Curran.

In support of their claim for fees, the appellants attempt to rely upon a copy of a contract of employment of Mr. Hill only, the original of which appellants assert is lost, and which the son denies approving in any capacity. In paragraph 4 of the stipulation made part of the record of the hearing held on May 10, 1972, after remand, the strongest statement Mr. Hill could make was, “\* \* \* that to the best of his knowledge and belief the decedent \* \* \* signed and executed the [original of] attached ‘contract and power of attorney’ marked Exhibit ‘C’ \* \* \*”. No one has testified the decedent actually signed the original, and the copy bears the signature of Mr. Hill only.

That part of the contract upon which the appellants rely is the provision “\* \* \* I hereby agree to pay you a fair and reasonable attorneys fee, based upon quantum merit (sic) \* \* \*.” In Black’s Law Dictionary (Rev. 4 ed) “quantum meruit” is defined, “as much as he deserved.”

The establishment of a contract becomes moot under the rule laid down by the Solicitor in the Estate of Tah-wat-is-tah-ker-na-ker or Lucy Sixteen, IA 1324, 70 I.D. 531 (1963) wherein a contract for a contingent 25 percent fee was held not to be controlling. The Judge (formerly Examiner) acting under the regulations had made a determination of the reasonable compensation to which the attorney (the same Mr. Hill as is here involved) was entitled and allowed \$1,000 of the \$9,456.33 claimed. The regulations then in effect, 25 CFR 15.26, and those currently in effect, 43 CFR 4.281, include substantially the same provisions,

\* \* \* In determining attorney fees, consideration shall be given to the fact that the property of the decedent is restricted or held in trust and that it is the duty of the Department to protect the rights of all parties in interest.

This provision brings upon us the application of the doctrine of “quantum meruit” above quoted which is correlated with “reasonableness.”

Judge Murrah wrote in the decision in United States v. Anglin & Stevenson et al., 145 F.2d 622, 630 (10th Cir. 1944):

\* \* \* it is well settled that in cases of this kind the allowance of attorneys' fees is within the judicial discretion of the trial judge, who has close and intimate knowledge of the efforts expended and the value of the services rendered. \* \* \*

It is well stated by the court in Kimball v. Public Utility Dist. No. 1 of Douglas County, 391 P.2d 205, 64 Wash. 2d. 252 (1964):

Canon of Professional Ethics 12, RCW Vol. 0, \* \* \* describes the determinants upon which reasonableness of the fee may be assessed. Such factors as the time and labor required, difficulty and complexity of the problems encountered, the amount, size and benefits to accrue from the controversy, the experience of the lawyers, and the customary charges of the bar for similar services--together with the other considerations mentioned--all are strong, though not controlling, guides in ascertaining the true value of professional services.

A review of the record here reveals little as to the reasonableness of this claim. The claim is based upon Mr. Hill's allegation that he has not been compensated for 60 hours devoted to the guardianship, and that he and Mr. Hurst have not been compensated for 270 hours devoted to the divorce. The number of hours is the subject of some dispute. In paragraph 5 of Exhibit "1" (the stipulation entered into and filed at the hearing held after remand)

Willis Robedeaux indicated he doubted the accuracy of the 270 hour figure since he felt Mr. Hill had charged for some “\* \* \* time spent while working on other Indian cases.”

There is nothing in the record which discloses an employment contract between Mr. Hurst and the decedent or the decedent’s son either for that matter. None is actually alleged. Mr. Hurst stated at the rehearing held pursuant to the remand order:

\* \* \* Now I didn’t appear in the Oklahoma County Court or before this Federal Department. I just helped Mr. Hill as local counsel in the case. I did participate in the appeal in the Supreme Court and did help write the brief.  
(Tr. 7.)

The October 26, 1970, affidavit of Mr. Coleman Hayes, appearing as Exhibit “B” of the original claim, includes an expression of his opinion that the fees claimed were reasonable and indicates that “\* \* \* \$25 per hour is less than the minimum which Mr. Hill would have been warranted in charging.” Mr. Hayes was never present before the Judge or subjected to cross-examination.

The appellants have made no attempt to explain or to establish the reasonableness of the \$25 hourly charge which they are claiming and which they have merely referred to as a minimum hourly fee. They presumably wished the Judge, and now the Board, to take judicial

notice of a minimum fee schedule fixing an hourly charge for legal services. Notice is taken of the fact that bar associations have established so-called minimum fee schedules, but importantly, these are not limited to a schedule of hourly rates. Notice is taken that such schedules also present alternative lump-sum amounts for particular tasks such as the drafting of a will, the handling of a noncontested divorce, adoptions and guardianships, etc, but we have no means by determining what if any part of such a schedule in use in Oklahoma should apply here. These schedules have been and are properly used by the trial Judges as guides in setting fees in their own jurisdictions. But nothing in this record gives us the necessary criteria for application of any such schedule.

Further, there is little in this record to assist even Judge Curran, who was at the scene, in gaining knowledge of the quality of professional skill which was applied in either of the proceedings conducted entirely before the Judges of the Oklahoma State Courts. The claim on file and the allegations in the notice of appeal are allegations only as to time spent. They are not evidence, and it could be argued that the work should properly have been completed in half the time. Judge Stephens in the decision in Sampsell v. Monell, 162 F.2d 4 (9th Cir. 1947) quoted, the following with approval from the decision in Woodbury v. Andrew Jergens Co., 37 F.2d 749, 750 (D.C. N.Y. 1930).



“\* \* \* The value of a lawyer’s services is not measured by time or labor merely. The practice of law is an art in which success depends as much as in any other art on the application of imagination--and sometimes inspiration--to the subject matter. The exercise of these faculties may occur at any stage in a case, though their influence on the course of the proceeding may not be established till its outcome. In order, therefore, accurately to chancer the value of a lawyer’s services, one must almost always examine them in the light of the event. \* \* \*”

The state court judges before whom the appellants appeared in this litigation were in a much better position than Judge Curran to evaluate the services rendered, a value left much in doubt because no proceeding was pressed to its conclusion. The appellants would have been well advised to have made timely application for fees to the Courts where the matters were pending.

However, the court held in State v. Johnson, supra, that the guardianship being limited to the estate only did not prevent the decedent from prosecuting a divorce action in his own name. By inference that holding permitted him to engage attorneys and obligate the estate for fees due in both the guardianship and the divorce. In Johnson we have,

Syllabus by the Court

\* \* \* \* \*

2. A ward can maintain an action for divorce in his own name, where the guardianship was limited

only to the ward's estate for the purpose of preserving the same, and there was no finding in the guardianship proceeding that the ward was insane.

Judge Curran acted upon the evidence before him within the regulations and within the rules of the cases cited above, within the rule in Campbell v. Green, 112 F.2d 143 (5th Cir. 1940) and within the rule in In Re Seed Marketing Association, Inc., 228 F. Supp. 812 (D.C. Neb. 1964).

No abuse of discretion on the part of Judge Curran is asserted, and that issue is not before us. Judge Curran's ruling should be affirmed.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Judge's order denying the petition for rehearing is AFFIRMED.

This decision is final for the Department.

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David J. McKee, Chairman

I concur:

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Mitchell J. Sabagh, Member